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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

KEITH GEROME McCRAY,

Defendant and Appellant.

F063988

(Super. Ct. No. F10904477)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Fresno County. Jonathan B. Conklin, Judge.

Benjamin Owens, under appointment by the Court of Appeal, for Defendant and Appellant.

Kamala D. Harris, Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Michael P. Farrell, Assistant Attorney General, Carlos A. Martinez and Kari L. Ricci, Deputy Attorneys General, for Plaintiff and Respondent.

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* Before Wiseman, Acting P.J., Detjen, J. and Franson, J.

A jury convicted appellant, Keith Gerome McCray, of unlawful driving or taking of a motor vehicle (Veh. Code, § 10851, subd. (a); count 1) and receiving a stolen motor vehicle (Pen. Code, § 496d, subd. (a); count 2).¹ In a separate proceeding, appellant admitted two of three alleged “strike” allegations² and seven of eight alleged section 667.5, subdivision (b) (hereafter section 667.5(b)) prior prison term enhancement allegations. The court made no inquiry regarding, and appellant did not admit, one of the strike allegations and one of the section 667.5(b) enhancement allegations.

The court struck the two strike allegations appellant admitted and imposed a sentence of 12 years, consisting of the two-year midterm on count 1, doubled pursuant to the three strikes law, for a total of four years based on the court’s assumption that appellant had admitted one strike allegation, plus eight years on the section 667.5(b) enhancements based on the court’s assumption that appellant had admitted all eight prior prison term enhancement allegations. The court imposed, and stayed, pursuant to section 654, a four-year term on count 2 and awarded appellant 699 days of presentence credits, consisting of 467 days of actual time credits and 232 days of conduct credits.

On appeal, appellant contends the court erroneously (1) imposed sentence on two prior prison term enhancements, and (2) failed to calculate his conduct credit under the one-for-one credit scheme of section 4019. We modify the sentence by striking two one-year section 667.5(b) enhancement terms, and otherwise affirm.

¹Except as otherwise indicated, all further statutory references are to the Penal Code.

²We use the terms “strike” and “strike convictions” as synonyms for “prior felony conviction” within the meaning of the “three strikes” law (§§ 667, subds. (b)-(i), 1170.12), i.e., a prior felony conviction or juvenile adjudication that subjects a defendant to the increased punishment specified in the three strikes law.

DISCUSSION

Appellant's Prior Prison Term Enhancements and Strike Conviction

Appellant contends the court erred in imposing sentence on two of his prior prison enhancements because (1) he did not admit one of them, and (2) two of the prison terms on which two of those enhancements were based were not “separately served.” The People concede both points and therefore conclude that two of the one-year terms imposed on the prior prison term enhancements are unauthorized and cannot be imposed. In addition, the People argue that because appellant did not admit the 1992 strike allegation and the court dismissed the two other strike allegations, the court erred in imposing sentence under the three strikes law. The People argue further that the appropriate remedy is remand for the limited purpose of either a trial on, or admission of, both the 1992 strike allegation and the section 667.5(b) enhancement allegation based on the prior prison term served for the 1992 strike conviction. Appellant, for his part, argues that this court should simply strike two of the one-year prior prison term enhancements, and that there is no need for remand to retry the section 667.5(b) allegations. Appellant raises no claim of error regarding the absence of a true finding on the strike allegations.

Background

It was alleged in an amended information that appellant suffered three strike convictions, each for robbery, in 1986, 1991 and 1992, respectively, and that he had served eight separate prison terms for felony convictions within the meaning of section 667.5(b), including one for his 1992 robbery conviction. In the proceeding in which appellant entered his pleas and admissions, he admitted the strike allegations based on the 1986 and 1991 robbery convictions and seven of the eight section 667.5(b) enhancement allegations, but the court did not mention, and appellant did not admit, the 1992 strike allegation and the section 667.5(b) enhancement allegation based on the prison term appellant served for his 1992 robbery conviction.

In addition to the section 667.5(b) allegation based on the prison term served for the 1992 strike conviction, it was also alleged, inter alia, that appellant served separate terms for his 1991 robbery conviction and a 1992 conviction of unauthorized possession of a controlled substance while incarcerated (§ 4573.6). However, the probation officer's report indicates that for a period of time in 1992, appellant served his sentences on these three offenses concurrently and was released on parole on all three cases in March 1995.

After the jury returned its verdicts, defense counsel informed the court that appellant "will admit his prior convictions" Immediately thereafter, the court took appellant's admissions but, as indicated earlier, the court made no mention of the 1992 strike allegation and the section 667.5(b) allegation based on the prison term served for the 1992 strike conviction.

Prior to imposing sentence, the court struck the 1986 and 1991 strike convictions and indicated it was not striking the 1992 strike conviction. In imposing sentence, the court stated, "There are eight prison priors that [appellant] has and has admitted pursuant to [section] 667.5(b)." Immediately thereafter, the court stated it was "looking through the file just to make sure [it had] the appropriate information" and moments later stated: "He admitted the prison priors. I am looking at Entry 17 on the docket order of 8/31/11, 'Defendant admits eight prison priors.' He did admit the three strike priors as well. So the sentence is affirmed."

Analysis

Under section 667.5(b), a defendant convicted of a felony is subject to a one-year enhancement "for each prior *separate* prison term" if the defendant does not remain free for five years of both prison custody and the commission of a new offense resulting in a felony conviction. (§ 667.5(b), italics added.) As the parties agree, "only one [section 667.5(b)] enhancement is proper where concurrent sentences have been imposed in two or more prior felony cases. [Citations.]" (*People v. Jones* (1998) 63 Cal.App.4th 744, 747.) Therefore, as the parties also agree, because three of appellant's section 667.5

enhancements were based on prison terms served concurrently, he was subject to one such enhancement for those three prison terms, rather than three. (*Jones*, at p. 750.) We will order two of appellant’s section 667.5(b) enhancements stricken.

We reject the People’s argument that because appellant did not admit one of the section 667.5(b) allegations, remand is necessary for either trial or admission of that allegation. The People base this claim on section 1018, which provides, in relevant part, that “Unless otherwise provided by law, every *plea* shall be entered or withdrawn by the defendant himself or herself in open court.” (Italics added.) However, here, where the question involves admissions of enhancement allegations rather than pleas to substantive offenses, it may be more accurate to describe appellant’s failure to admit the special allegation in question as a violation of section 1025.³ In any event, such error does not necessitate remand.

As demonstrated above, (1) the section 667.5(b) allegation that appellant did not admit is one of three such allegations upon which only one 1-year section 667.5(b) enhancement can be based, and (2) appellant admitted the other two allegations. The outcome on remand would no doubt be exactly what we can achieve by striking two of these enhancements: the imposition of a single one-year term based on the prison term appellant served on three of his prior felony convictions. Therefore, remand for trial or admission of the one allegation appellant did not admit would be pointless. (Cf. *People*

³Section 1025 provides in relevant part that “a defendant who is charged in the accusatory pleading with having suffered a prior conviction ... shall be asked whether he or she has suffered the prior conviction.... [H]is or her answer shall be entered in the minutes of the court.... The refusal ... to answer is equivalent to a denial” (*Id.*, subd. (a).)

In *People v. Williams* (1980) 103 Cal.App.3d 507, 516, the court stated: “It is reasonably apparent that the purpose behind ... *section 1025’s requirement that a defendant personally answer that he has suffered the subject prior conviction* is the same purpose behind ... section 1018’s requirement that the defendant personally enter a guilty plea: to ensure that the incriminatory statement is the defendant’s own. [Citation.]” (Italics added.)

v. Dunnahoo (1984) 152 Cal.App.3d 561, 579 (*Dunnahoo*) [sentencing error did not result in remand because more favorable result was “improbable[,]” and appellate court “unwilling to expend valuable judicial resources by engaging in idle gestures or merely adhering to ritualistic form”].)

For similar reasons, we will not remand for trial or admission on the 1992 strike allegation, which appellant did not admit but which nonetheless became the basis for imposition of sentence under the three strikes law. At the time of the trial on the strike and enhancement allegations, defense counsel indicated appellant wished to admit *all three* strike allegations, and on appeal appellant has not raised the issue of imposition of a three strikes law sentence based on a strike allegation not found true. There appears to be virtually no likelihood that on remand appellant would insist on a trial on the remaining strike allegation. Thus, there is no reason to remand the matter. (Cf. *Dunnahoo, supra*, 152 Cal.App.3d at p. 579.)

Presentence Custody Credits

Under section 2900.5, a person sentenced to state prison for criminal conduct is entitled to presentence custody credits for all days spent in custody before sentencing. (§ 2900.5, subd. (a).) In addition, section 4019 provides for what are commonly called conduct credits, i.e., credits against a prison sentence for willingness to perform assigned labor (§ 4019, subd. (b)) and compliance with rules and regulations (§ 4019, subd. (c)). (*People v. Dieck* (2009) 46 Cal.4th 934, 939, fn. 3.)

Section 4019 has undergone numerous amendments in the past few years. Under the version in effect prior to January 25, 2010, to which we refer as former section 4019, six days would be deemed to have been served for every four days spent in actual custody—a ratio of one day of conduct credit for every two days served (one-for-two credits). (Former § 4019, subd. (f), as amended by Stats. 1982, ch. 1234, § 7, pp. 4553-4554.) Effective January 25, 2010, the Legislature amended section 4019 to provide for two days of conduct credit for every two days served—one-for-one credits—for certain

defendants, but this more generous credits accrual scheme did not apply to, inter alia, defendants who, like appellant, had suffered a strike. (Stats. 2009, 3d Ex. Sess. 2009-2010, ch. 28, § 50.) Effective September 28, 2010, the Legislature again amended section 4019, this time to restore the less generous one-for-two credits, but this version of the statute by its terms did not apply where defendants were confined for crimes committed prior to September 28, 2010. (Stats. 2010, ch. 426, § 2.)

The Legislature next amended section 4019 in Assembly Bill No. 109 (2011-2012 Reg. Sess.) (hereafter Assembly Bill No. 109), which was part of the so-called criminal realignment legislation. “[T]he overall purpose of [this legislation] is to reduce recidivism and improve public safety, while at the same time reducing corrections and related criminal justice spending.” (*People v. Cruz* (2012) 207 Cal.App.4th 664, 679.) Under the new legislation, to which we sometimes refer to as the 2011 amendment, all prisoners, including those who have suffered a strike, can receive one-for-one credits. (§ 4019, subds. (b), (c), as amended by Stats. 2011, ch. 15, § 482.) The legislation expressly provided that this change “shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.” (§ 4019, subd. (h), as added by Stats. 2011, ch. 15, § 482 and amended by Stats. 2011, ch. 39, § 53.) Appellant committed the instant offenses on August 29, 2010, approximately 13 months prior to the effective date of this amendment.

Appellant contends the 2011 amendment created two classes of prison inmates who are “similarly situated with respect to the purpose of enhanced credit entitlement,” viz., “(1) those prison inmates sentenced under the three strikes law who will receive additional conduct credits since they committed their crimes after October 1, 2011; and (2) those prison inmates sentenced under the three strikes law who will not receive additional conduct credits since they committed their crimes prior to October 1, 2011.”

Appellant, a member of the second group, suggests that there is no rational basis for denying him the enhanced credits under the current version of section 4019 for the sole reason that he committed his crimes prior to October 1, 2011, and therefore he was denied his constitutional guarantee of equal protection of the laws. Section 4019, appellant asserts, “must apply retroactively,” such that he is awarded one-for-one credits of 467 days under the 2011 amendment to section 4019 for his entire period of presentence confinement—August 30, 2010, through the date of sentencing, December 9, 2011—rather than the one-for-two credits of 232 days awarded by the court under former section 4019.⁴ We disagree.

“The concept of equal protection recognizes that persons who are similarly situated with respect to a law’s legitimate purposes must be treated equally. [Citation.] Accordingly, “[t]he first prerequisite to a meritorious claim under the equal protection clause is a showing that the state has adopted a classification that affects two or more *similarly situated* groups in an unequal manner.” [Citation.] “This initial inquiry is not whether persons are similarly situated for all purposes, but “whether they are similarly situated for purposes of the law challenged.”” (*People v. Brown* (2012) 54 Cal.4th 314, 328 (*Brown*)). “If the first prerequisite is satisfied, we proceed to judicial scrutiny of the classification.” (*People v. Rajanayagam* (2012) 211 Cal.App.4th 42, 53 (*Rajanayagam*)). As the court in *Rajanayagam* stated in addressing an equal protection challenge to the 2011 amendment, “Where, as here, the statutory distinction at issue neither touches upon fundamental interests nor is based on gender, there is no equal protection violation if the challenged classification bears a rational relationship to a legitimate state purpose.

⁴We presume that the court awarded conduct credits under the one-for-two scheme of former section 4019, even though appellant was sentenced in December 2011, because the one-for-one credits accrual scheme established by the January 25, 2010, amendment did not apply to appellant because he had suffered a strike conviction, and the September 28, 2010, amendment, which reinstated one-for-two credits, applied only to confinement for crimes committed on or after September 28, 2010.

[Citations.]” (*Ibid.*) “Under the rational relationship test, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification. [Citation.]” (*Ibid.*)

We first consider the question of whether appellant, who has a strike conviction and committed the instant offenses prior to October 1, 2011, and persons who have suffered a strike conviction and were confined for offenses for crimes committed after that date are similarly situated with respect to the purpose of the law. Preliminarily, we note that appellant’s period of presentence custody—August 30, 2010, through December 9, 2011—encompasses time both before, on and after October 1, 2011.

In *Brown, supra*, 54 Cal.4th 314, our Supreme Court addressed whether the amendment to section 4019 that became operative on January 25, 2010, should be given retroactive effect to permit prisoners who served time in local custody before that date to earn conduct credits at the increased rate. (*Brown*, at pp. 317-318.) In addressing the issue of whether defendant was similarly situated to those defendants who served time after the operative date, the court explained: “As we have already explained, the important correctional purposes of a statute authorizing incentives for good behavior [citation] are not served by rewarding prisoners who served time before the incentives took effect and thus could not have modified their behavior in response. That prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows.” (*Id.* at pp. 328–329.)

Relying on *Brown*, this court, in *People v. Ellis* (2012) 207 Cal.App.4th 1546, rejected an equal protection challenge virtually identical to that raised by appellant here: “We can find no reason *Brown’s* conclusions and holding with respect to the January 25, 2010, amendment should not apply with equal force to the October 1, 2011, amendment. [Citation.] Accordingly, we reject defendant’s claim he is entitled to earn conduct credits at the enhanced rate provided by current section 4019 for the entire period of his

presentence incarceration.”⁵ (*Id.* at p. 1552; accord, *People v. Kennedy* (2012) 209 Cal.App.4th 385, 396-397 (*Kennedy*).

Appellant argues *Brown* is inapposite. His argument is essentially the same as the reasoning articulated by the court in *Rajanayagam*, where the court agreed with appellant’s position, but with respect to time served after October 1, 2011, only.⁶ In *Rajanayagam*, the court held that the two groups in question—“(1) those defendants who are in jail on and/or after October 1, 2011, who committed an offense on or after October 1, 2011, and (2) those defendants who are in jail on and/or after October 1, 2011, who committed the same offense *before* October 1, 2011”—were “similarly situated for purposes of the October 1, 2011, amendment” (*Rajanayagam, supra*, 211 Cal.App.4th at p. 53.) *Brown*, the court stated, “is inapposite on this point.” (*Id.* at p. 54.) The *Rajanayagam* court reasoned as follows: “[*Brown*] did not involve a situation where a defendant sought enhanced conduct credit for time served after the amendment’s operative date. Instead, *Brown* concerned whether the amendment was retroactive, i.e., whether a defendant who served time before the operative date was entitled to enhanced conduct credits. Here, we are faced with the issue of whether the current version of section 4019 operates prospectively as to a defendant who committed an offense before the amendment’s effective date. We read the language of *Brown, supra*, 54 Cal.4th at page 329, ‘[t]hat prisoners who served time before and after former section 4019 took effect are not similarly situated necessarily follows’ as limited to the facts in that case—that there is no incentive for defendants who served time before the amendment’s effective date to work and behave. *Brown* is not instructive on the issue of

⁵Like appellant, the defendant in *Ellis* was confined prior to sentencing both before, on and after October 1, 2011.

⁶The defendant in *Rajanayagam* effectively conceded he was not entitled to the portion of his presentence confinement that predated October 1, 2011. (*Rajanayagam, supra*, 211 Cal.App.4th at pp. 46, 47.

whether there is an incentive for defendants who served time after the amendment's effective date to work and behave.” (*Ibid.*)

This court did not specifically address the forgoing argument in *Ellis*. And we need not do so here because, as we explain below, even assuming for the sake of argument that the “similarly situated” requirement has been met for the entire period of appellant’s presentence confinement, there is a rational basis for the legislative classification at issue. On this point we agree with the *Rajanayagam* court’s analysis, from which we quote at length.

“With respect to the judicial scrutiny of the classification, we must determine whether there is any reasonably conceivable state of facts that could provide a rational basis for the classification. It is undisputed the purpose of section 4019’s conduct credits generally is to affect inmates’ behavior by providing them with incentives to work and behave. (*Brown, supra*, 54 Cal.4th at pp. 327-329.) But that was not the purpose of Assembly Bill No. 109, which was part of the Realignment Act.... [T]he Legislature’s stated purpose for the Realignment Act ‘is to reduce recidivism and improve public safety, while at the same time reducing corrections and related criminal justice spending.’ [Citations.] Section 17.5, subdivision (a)(7), puts it succinctly: ‘The purpose of justice reinvestment is to manage and allocate criminal justice populations more *cost-effectively*, generating savings that can be reinvested in evidence-based strategies that increase public safety while holding offenders accountable.’” (*Rajanayagam, supra*, 211 Cal.App.4th at pp. 54-55.)

Thus, we must determine whether the 2011 amendment to section 4019 awarding less credits to those defendants sentenced under the three strikes law who committed their offenses before October 1, 2011, than those defendants sentenced under the three strikes law who committed their offenses on or after October 1, 2011, “bears a rational relationship to the Legislature’s legitimate state purpose of reducing costs.” (*Rajanayagam, supra*, 211 Cal.App.4th at p. 55.) “We are mindful the rational

relationship test is highly deferential. (*People v. Turnage* (2012) 55 Cal.4th 62, 77 [“[w]hen conducting rational basis review, we must accept any gross generalizations and rough accommodations that the Legislature seems to have made. A classification is not arbitrary or irrational simply because there is an “imperfect fit between means and ends”].)” (*Ibid.*)

As did the court in *Rajanayagam*, “We conclude the classification in question does bear a rational relationship to cost savings.” (*Rajanayagam, supra*, 211 Cal.App.4th at p. 55.) “Preliminarily, we note the California Supreme Court has stated equal protection of the laws does not forbid statutes and statutory amendments to have a beginning and to discriminate between rights of an earlier and later time. (*People v. Floyd* (2003) 31 Cal.4th 179, 188 (*Floyd*) [‘[d]efendant has not cited a single case, in this state or any other, that recognizes an equal protection violation arising from the timing of the effective date of a statute lessening the punishment for a particular offense’].) Although *Floyd* concerned punishment, we discern no basis for concluding differently here.” (*Ibid.*; accord, *Kennedy, supra*, 209 Cal.App.4th at pp. 398-399 [“Although [the 2011 amendment] does not ameliorate punishment for a particular offense, it does, in effect, ameliorate punishment for all offenses committed after a particular date”].)

“More importantly, in choosing October 1, 2011, as the effective date of Assembly Bill No. 109, the Legislature took a measured approach and balanced the goal of cost savings against public safety. The effective date was a legislative determination that its stated goal of reducing corrections costs was best served by granting enhanced conduct credits to those defendants who committed their offenses on or after October 1, 2011. To be sure, awarding enhanced conduct credits to everyone in local confinement would have certainly resulted in greater cost savings than awarding enhanced conduct credits to only those defendants who commit an offense on or after the amendment’s effective date. But that is not the approach the Legislature chose in balancing public safety against cost savings. (*Floyd, supra*, 31 Cal.4th at p. 190 [Legislature’s public purpose predominate

consideration].) Under the very deferential rational relationship test, we will not second-guess the Legislature and conclude its stated purpose is better served by increasing the group of defendants who are entitled to enhanced conduct credits when the Legislature has determined the fiscal crisis is best ameliorated by awarding enhanced conduct credit to only those defendants who committed their offenses on or after October 1, 2011.” (*Rajanayagam, supra*, 211 Cal.App.4th at pp. 55-56; accord, *Kennedy, supra*, 209 Cal.App.4th at p. 399 [in making changes to custody credits earning rates “the Legislature has tried to strike a delicate balance between reducing the prison population during the state’s fiscal emergency and protecting public safety,” and “Although such an effort may have resulted in comparable groups obtaining different credit earning results, under the rational relationship test, the Legislature is permitted to engage in piecemeal approaching to statutory schemes addressing social ills and funding services to see what works and what does not”].)

Finally, we find a second rational basis for the classification at issue. As the court stated in *Kennedy*: “[T]he Legislature could rationally have believed that by making the 2011 amendment to section 4019 have application determined by the date of the offense, they were preserving the deterrent effect of the criminal law as to those crimes committed before that date. To reward appellant with the enhanced credits of the 2011 amendment to section 4019, even for time he spent in custody after October 1, 2011, weakens the deterrent effect of the law as it stood when appellant committed his crimes. We see nothing irrational or implausible in a legislative conclusion that individuals should be punished in accordance with the sanctions and given the rewards (conduct credits) in effect at the time an offense was committed.” (*Kennedy, supra*, 209 Cal.App.4th at p. 399.) For the forgoing reasons, we conclude appellant’s equal protection rights were not violated.

Statutory Construction

As an alternative to his equal protection claim, appellant argues that under section 4019, properly construed, he is entitled to one-for-one credits for the portion of his presentence confinement time served on and after October 1, 2011.

Appellant bases this claim on section 4019, subdivision (h), which provides as follows: “The changes to this section enacted by the act that added this subdivision shall apply prospectively and shall apply to prisoners who are confined to a county jail, city jail, industrial farm, or road camp for a crime committed on or after October 1, 2011. Any days earned by a prisoner prior to October 1, 2011, shall be calculated at the rate required by the prior law.”

Appellant argues: “The first sentence implies that the increased rate of credit accrual only applies to those whose crimes occurred on or after [October 1, 2011]. [Citation.] However, the last sentence suggests that the new rate applies to all time in custody on or after October 1, 2011; otherwise it would be meaningless because credit cannot be earned on an offense not yet committed. [Citation.] This resolves the apparent ambiguity because it gives meaning to both sentences. [Citations.]”⁷

This contention is without merit. As this court stated in *Ellis*, in rejecting an identical claim: “In our view, the Legislature’s clear intent was to have the enhanced rate apply *only* to those defendants who committed their crimes on or after October 1, 2011. [Citation.] The second sentence does not extend the enhanced rate to any other group, but merely specifies the rate at which all others are to earn conduct credits. So read, the sentence is not meaningless, especially in light of the fact the October 1, 2011, amendment to section 4019, although part of the so-called realignment legislation,

⁷Appellant bases this claim on dicta in *People v. Olague* (2012) 205 Cal.App.4th 1126. The California Supreme Court granted review in *Olague* (review granted Aug. 8, 2012, S203298) after briefing was completed in this case. An opinion is no longer considered published if the Supreme Court grants review (Cal. Rules of Court, rule 8.1105(e)(1)) and may not be relied on or cited (Cal. Rules of Court, rule 8.1115(a)).

applies based on the date a defendant's crime is committed, whereas section 1170, subdivision (h), which sets out the basic sentencing scheme under realignment, applies based on the date a defendant is sentenced.” (*Ellis, supra*, 207 Cal.App.4th at p. 1553.)

Here, as indicated above, because appellant committed the instant offenses prior to October 1, 2011, his custody credits must be calculated “under prior law” within the meaning of section 4019, subdivision (h). As also indicated earlier, the applicable prior law here is former section 4019, which provided for one-for-two credits.⁸ Therefore, the court's award of conduct credits of 232 days, based on 467 days of actual time credits, was correct. (Former § 4019, subds. (b), (c); *People v. Caceres* (1997) 52 Cal.App.4th 106, 110 [correct formula is to divide days of actual custody, including date of sentencing, by four, and then multiply result, excluding remainder, by two].)

DISPOSITION

Appellant's sentence is modified as follows: Two of the enhancements imposed pursuant to section 667.5(b) are stricken, leaving a total term of imprisonment of 10 years.

The trial court is directed to prepare an amended abstract of judgment reflecting this modification and forward it to the Department of Corrections and Rehabilitation. In all other respects, the judgment is affirmed.

⁸See footnote 4, *ante*.